

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 428 of 1988

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE G.D. KAMAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SANMUKHLAL JEKISHANDAS

Versus

BHAIDAS ICHHARAM

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Appearance:

MR AVINASH K MANKAD for Petitioner

MR NM KAPADIA for Respondent No. 1

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CORAM : THE CHIEF JUSTICE G.D. KAMAT

Date of decision: 02/08/96

ORAL JUDGEMENT

Rejection of the amendment application by the order dated December 1987 by the District Judge, Surat has landed the original defendant in this Court in the present Civil Revision Application.

2. The facts are the respondent instituted a Rent

Suit against the petitioner in the Small Causes Court, Surat, seeking eviction of the petitioner from the residential premises on several grounds, including the ground of subletting. It is common ground that eviction of the tenants at the relevant time was governed by the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, for short Bombay Rent Act. 3.

The suit was resisted by the petitioner traversing the ground of eviction made against him, including the ground of subletting. On the ground of subletting the case of the petitioner was that he had never sublet the premises to his brother Ramanlal and that he along with his brother had constituted a joint Hindu family and being eldest the petitioner had taken the lease on behalf of the family. The defence taken by the petitioner however, did not find favour with the trial Court and the suit was decreed on 25th August 1983 and eviction of the petitioner was directed.

4. Being aggrieved by the order of eviction the petitioner instituted an appeal being Civil Appeal No.239 of 1983 before the District Court, Surat. During the pendency of the appeal on 21.1.1985 the petitioner moved an application for amendment under Order 6 Rule 17 of the Code of Civil Procedure seeking to amend the written statement. In short, amendment was to the effect that even on the assumption that the petitioner had sublet the premises in favour of his brother, in view of the Amendment Act 1959 the sub-tenant was protected and, therefore, there could be no eviction of the sub-tenant. [ The amendment application however, did not find favour with the learned District Judge and he rejected the same by the impugned order.

5. The learned District Judge rejected the application for amendment firstly on the ground of delay and laches. In that the learned District Judge found that the amendment application was filed more than one and half years after the institution of the appeal. Secondly, the learned District Judge held that the plea raised in the amendment is inconsistent with the original defence raised by the petitioner and lastly, granting ent may also entail leading fresh evidence.

6i It appears that large number of authorities were cited for and against the amendment sought which have been looked into by the learned District Judge, but finally however, held that amendment cannot be granted as mentioned elsewhere in the judgment.

7. The grant of amendment is a rule and rejection is

an exception. The impugned order was made some time in the year 1987. Much water has flown since then and it is well settled now that amendments are generally and ordinarily allowed and seldom rejected.

8. There is one more aspect which cannot be over-looked. The Rent Acts are enacted as and by way of protection to the tenants. The sole question to ask in the present revision application is, whether the amendment sought is so inconsistent with as compared to the original stand of the petitioner.

It is clear that the petitioner had defended the ground of sub-tenancy on the basis that a tenancy was taken for the entire family, including his brother Ramanlal and the lease was taken by him as a head of the family. The averment of the respondent in the plaint was that the petitioner had sublet the premises in question to his brother Ramanlal. By virtue of the provisions of the Bombay Rent Act the sub-tenants are protected and they are made deemed tenants. In the written statement the petitioner was to take the stand that there was no sub-tenancy because he had obtained the premises on lease as a head of the family and even when he was to take alternative plea that on the assumption that there was sub-tenancy his brother Ramanlal is protected by virtue of the amended provisions of the Bombay Rent Act, I do not think such an alternative plea could have been rejected. The question now is, whether such a plea raised at the appellate stage can be allowed.

9. The pleas, the original and the amended one are no doubt somewhat inconsistent. None the less such pleas cannot be said to embarrass the respondent/plaintiff. Besides, the issue raised is a legal one and the same has to be answered in the light of evidence on record.

10. In this view of the matter the revision succeeds. The amendment application dated 21.1.1985 is allowed. The petitioner/defendant to carry out the necessary amendment. In view of the time lost on account of pendency of this Revision Application the learned District Judge is directed to dispose of the appeal expeditiously. Rule accordingly made absolute as indicated. There shall be no order as to costs.

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